IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.	:	09/769,604
Applicant	:	Stephen M. Howard et al.
Filed	:	January 25, 2001
T.C./A.U.	:	2157
Examiner	:	Osman, Ramy M.
Docket No.	:	EMC-002PUS
Customer No. :		51576

Confirmation No.: 4397

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sirs:

DECLARATION UNDER 37 CFR §1.131

1.   We, Stephen M. Howard, William Alton Gill, Robert Alan Boudrie, and Glenn R. Sachar, are co-inventors of a U.S. Patent Application entitled "Data Backup System Having a Flexible Restore Architecture," now pending before the U. S. Patent Office as Application No. 09/769,604.

2.   Prior to December 22, 2000, the invention claimed in U.S. Patent Application No. 09/769,604 was actually reduced to practice. The subject matter claimed in the '604 application, which was reduced to practice prior to December 22, 2000, includes subject matter set forth in claim 1, for example, which requires:

A method of restoring backed up data, comprising:
        retrieving, by a data backup storage system, a list of objects that are restorable by a client having a backup/restore module and a logical volume manager to communicate with a storage system, the backup storage system having a storage system interface to communicate with the storage system, a backup storage unit to store backed up data, and a network interface to communicate with the client;

displaying the list of restorable objects for browsing by a user, wherein the restorable objects are located on a plurality of physical storage devices;

generating a first list of restorable objects marked for restoration by the user, wherein each of the restorable objects is associated with a particular library, wherein the library supports at least one catalog containing information for the backed up data including media type and metadata;

submitting the first list of marked restorable objects to the backup storage system for restoration for the client;
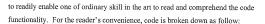
submitting a second list of marked restorable objects to the backup storage system; and

executing, by the backup storage system, a restoration of the submitted first and second lists of marked restorable objects via a remote procedure call such that first and second restore submissions can be made prior to restore execution.

Functionality for the claimed subject matter was contained in software modules forming a part of a software release prior to December 22, 2000, as described more fully below and in the attached Exhibits.

3.   Prior to December 22, 2000, the claimed invention was contained in a software release for the EDM product of EMC Corporation. Exhibit A shows a Software Reference document dated March 2000 describing the claimed invention. The claimed subject matter is referenced at least at page 48-53 (GUI) (1-14 to 1-19), 78 (3-12), 125 (5-13), and 128-131 (5-16 to 5-20).

4.   Exhibit B shows Software Release Notes document dated March 2000 the claimed subject matter is referred to at least in pages 11-12 (1-7,8).

5.   Prior to December 22, 2000, the claimed invention was contained in source code used to generate the software release having the functionality set forth in the claims. Exhibit C contains the source code. The source code is extremely well commented so as

to readily enable one of ordinary skill in the art to read and comprehend the code
functionality. For the reader's convenience, code is broken down as follow:

    C1   Main service file

    C2   Process manager

    C3   Code for at least claims 1, 12, 15 and 22

    C4   Code for at least claims 2 and 20

    C5   Code for at least claim 3

    C6   Code for at least claims 4, 6, and 19

    C7   Code for at least claims 5 and 13

    C8   Code for at least claim 7

    C9   Code for at least claim 8

    C10   Code for at least claims 9, 10, 11, 14, 17, and 21

    C11   Code for at least claims 18 dispatch daemon part l

    C12   Code for dispatch daemon part ll

    C13   Code for dispatch daemon part III

    C14   Code for dispatch daemon part IV

    C15   Code for GUl at least claims 5 and 13 part I

    C16   Code for GUl at least claims 5 and 13 part ll

6.   We affirm and incorporate herein by reference our previous Declaration under
Rule 1.131

7.   All of the acts referred to herein took place in the United States.

8.   All of the statements made herein are of my own knowledge and are true, these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application and any patent issuing thereon, or any patent to which this verified statement is applied.

4/8/2008
Date of Signature

By: _Stephen M. Howard_
Stephen M. Howard

4/8/2008
Date of Signature

By: _William Alton Gill_
William Alton Gill

4/8/2008
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By: _Robert Alan Boudrie_
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4/08/2008
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